



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 8, 2007

The Honorable James G. Phinizy, Chairman
Environment and Agriculture Committee
Legislative Office Building, Room 303
Concord, NH 03301

RE: HB 384 Relative to Repealing the Authority of the Department of Environmental Services Regarding Sludge and Biosolids and Establishing a Committee to Study New Sludge Legislation.

Dear Chairman Phinizy:

Thank-you for the opportunity to testify on HB 384, which seeks to repeal the authority of the Department of Environmental Services (DES) regarding sludge and biosolids and to establish a committee to study new sludge legislation.

DES does not support the repeal of the statutes as proposed in Paragraph 1. However, DES does support the establishment of a legislative committee to study the management of sludge and develop legislative proposals for potential improvements to this program, as proposed in Paragraphs 2 through 6.

The statutes proposed to be repealed by Paragraph 1, RSA 485-A:4, XVI-c and XVI-d, and RSA 6:12(b)(62), are presented in Attachment I and discussed briefly below:

RSA 485-A:4, XVI-c which became law in 1997, establishes a program for the annual random sampling and analysis of sludge and biosolids. This section also requires that DES file an annual report with the Legislature summarizing the results of a random testing program. DES has complied with this annual reporting requirement, and copies of these reports can be provided upon request. The random testing program is currently funded through a \$500 fee assessed on the cost of obtaining a sludge quality certification (SQC), which is issued by DES based on additional authority granted by RSA 485-A:4, XVI-c. The funds are deposited into an account established in RSA 6:12 I (b)(62). Municipalities and political subdivisions are exempt from paying an SQC fee and have annually received one free round of sludge sampling and analysis. Last year, 16 municipalities or political subdivisions were provided with this benefit.

RSA 485-A:4, XVI-d, which also became law in 1997, requires DES "to conduct on-site inspections of sludge and biosolids sites for adherence to state and federal requirements for such activity". DES has conducted these inspections of permitted sludge facilities on an ongoing basis and, for the reasons discussed

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below, would continue to do so in the future under the authority of RSA 485-A: 4, XVI-b even if RSA 485-A: 4, XVI-d were repealed.

RSA 485-A: 4 XVI-b, which is unaffected by HB 384, provides DES with the statutory authority "to regulate the removal, transportation, and disposal of sludge through a permit system." This is the primary statutory authority for DES regulation of sludge and biosolids. Therefore, if the repeals proposed in Paragraph 1 of HB 384 were to become law, DES would continue to regulate the processing, transportation, and disposal or beneficial use of sludge and biosolids to ensure these materials are utilized or disposed in an environmentally sound manner in accordance with state law. However, without the \$500 assessed fee on the cost of obtaining an SQC, the random sludge sampling program and the annual report to the Legislature would be eliminated. DES does not believe that the general public or the regulated community is well served by the loss of this program and strongly opposes any such effort to change current law.

DES supports the proposed legislative study committee to study the management of sludge as proposed in Paragraphs 2 through 6 of HB 384. We look forward to assisting this committee in its efforts to understand New Hampshire's sludge management program and how it might be improved.

Thank you for your consideration and if you have any questions please contact me at 271-2958 or Patricia Hannon at 271-2758.

Sincerely,

Michael J. Wala, ASK '9. Comm.
for Thomas S. Burack
Commissioner

Attachment

cc: Representative Hall
Representative Owen

ATTACHMENT I
NEW HAMPSHIRE STATUTES PROPOSED FOR REPEAL BY HOUSE BILL 384

Note: The language proposed for repeal by HB 384 is presented below in bold italics, with strikeout lines.

485-A:4 Duties of Department. – It shall be the duty of the department and the department is authorized:

~~XVI-c. (a) To design and implement a program for state or independent third party sampling and testing of sludge or biosolid materials that are intended for land application. The department shall design the sampling methodology, in consultation with university of New Hampshire statisticians and sludge and biosolid experts, to provide a statistical evaluation of the contaminant levels contained in sludge or biosolids. The department shall concentrate its testing on those contaminants that pose greater risks to public health and the environment due to their toxicity, potential availability, concentration levels, or concentration uncertainty. The department shall maintain a database of testing results and prepare, in consultation with university of New Hampshire statisticians and sludge and biosolid experts, and make available to the public and the general court, an annual report by November 1 of each year which analyses the compiled test results, including data from prior years, as appropriate. The analysis shall detail contaminant concentrations on both a statewide and generator level and shall indicate the statistical degree of certainty in the results of the analysis. The department shall attempt to present the report in terms that are understandable to the layperson including practical examples such as the probability that any given load of untested sludge exceeds a contaminant standard.~~

~~—(b) The department shall establish a fee of \$500, to be paid by sludge quality certificate holders by January 1 of each year. The fee shall be deposited in a special, nonlapsing sampling and analysis of sludge or biosolids samples fund, for exclusive use by the department to implement the program established in subparagraph (a).~~

~~—XVI-d. To conduct on-site inspections of sludge or biosolid application sites to monitor adherence to all state and federal requirements for such activity.~~

6:12 Application of Receipts. –

I. The requirement that the state treasurer shall maintain an account or fund separately on the books of the state shall be met by the department of administrative services in the following manner:

(a) The department of administrative services shall maintain the account or fund in the accounting system of the state.

~~—(b) Moneys received by the state treasurer, as provided in RSA 6:11, shall be available for general revenue of the state with the following exceptions:~~

~~(62) Money received under RSA 485-A:4, XVI-c, which shall be deposited in the sampling and analysis of sludge or biosolids samples fund.~~